

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARK HALL #222032,

Plaintiff,

Case No. 2:06-cv-193

v.

Honorable Robert Holmes Bell

DAVID BURNETT, et al.,

Defendants.

/

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on April 4, 2007. The Report and Recommendation was duly served on the parties. The Court received objections from Defendant Burnett, as well as a reply to the objections by Plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

In his objections, Defendant Burnett states that the Magistrate Judge erred in denying his motion to revoke pauper status. Defendant Burnett claims that the dismissal in *Hall v. Mayer, et al.*, 2:96-cv-62 (W.D. Mich. Apr. 11, 1997), constituted a strike because the docket sheet entry for the April 11, 1997 judgment (docket #17) states that the case was dismissed "as frivolous and failing to state a claim." However, this judgment was vacated on April 24, 1997 (docket #19), and a new judgment was entered which omitted the above quoted language (docket #20). Therefore, this objection lacks merit.

Defendant Burnett also claims that habeas corpus cases which have been dismissed with prejudice count as strikes pursuant to 28 U.S.C. § 1915(g). However, Defendant Burnett fails to offer any controlling authority in support of this assertion. The court notes that habeas corpus actions are distinct from § 1983 actions and should not be treated in the same manner. *Moore v. Pemberton*, 110 F.3d 22 (7th Cir. 1997) (reasons for not construing a § 1983 action as one seeking habeas relief include (1) potential application of *Heck v. Humphrey*, 512 U.S. 477 (1994), (2) differing defendants, (3) differing standards of § 1915(a)(3) and § 2253 (c), (4) differing fee requirements, (5) potential application of second or successive petition doctrine or three-strikes rules of § 1915(g)). Therefore, this objection lacks merit.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court and Defendant Burnett's motion to revoke pauper status (docket #13) is DENIED.

Dated: May 2, 2007

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE